

### **REMARKS**

Claims 1-24 and 26-49 are pending. Of those, claims 1, 24, 32, 39 and 48-49 are independent.

By this reply, claims 48-49 have been added. And claim 25 has been canceled without prejudice to or disclaimer of the subject matter contained therein.

### **§102 REJECTION**

Beginning on page 2 of the Office Action, claims 1-21 and 24-43 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,574,863 (the '863 patent) to Nelson et al. Applicant traverses.

Applicant understands the Examiner's anticipation rationale to be as follows. As disclosed by the '863 patent, Message No. 1 ("ARE-YOU-ACTIVE") is interpreted as corresponding to the first heartbeat signal. The disclosed reply to (or, in other words, acknowledgement of) Message No. 1 then is interpreted as corresponding to the second heartbeat signal. If the reply to Message No.1 is not received, then the '863 patent teaches taking adaptive action. Original claim 1 has been interpreted to require monitoring interruption of only one of the first and second heartbeat signals. Because the '863 patent teaches taking action when the reply to Message No. 1 is not received before a timeout, the Examiner interprets this as monitoring reception of the second heartbeat signal. Applicant will assume for the sake of argument that this is a reasonable interpretation.

A distinction of amended claim 1 over the '863 patent is monitoring reception of the first heartbeat signal and the second heartbeat signal for interruption in the regular receipt thereof, respectively. As noted above, the '863 patent does not teach monitoring the reception of Message No. 1 (interpreted by the Examiner as the first heartbeat signal). Rather, the acknowledgement (interpreted by the Examiner as the second heartbeat signal) of Message No. 1 is the only reception-monitoring taught by the '863 patent.

Claims 2-21 depend from claim 1 and exhibit at least the same distinction of claim 1 over the '863 patent, respectively.

Amended independent claim 24, independent claim 32 and amended independent claim 39 recite features similar to claim 1 and thus similarly distinguish over the '863 patent, respectively. Claims 26-31, 33-38 and 40-43 depend from claims 24, 32 and 39 and exhibit at least the same distinction of claims 24, 32 and 39 over the '863 patent, respectively. Claim 25 has been canceled, rendering moot its rejection.

In view of the foregoing discussion, this rejection is improper and Applicant requests that it be withdrawn.

### **§103 REJECTIONS**

Beginning on page 15 of the Office Action, claim 22 is rejected under 35 U.S.C. §103(a) as being unpatentable over the '863 patent taken alone. Applicant traverses.

Also, beginning on page 15 of the Office Action, claims 23 and 44-47 are rejected under 35 U.S.C. §103(a) as being unpatentable over the '863 patent in view of U.S. Patent No. 6,633,587 (the '587 patent) to Bennett. Applicant traverses.

The '587 patent has not been cited as a teaching of the distinction over the '863 patent asserted above. Nor would it be reasonable to assert that it suggests, much less discloses, the above-noted distinction.

Claims 22-23 and 44-47 depend from claims 1, 24, 32 and 39 and exhibit at least the above-noted distinctions of claims 1, 24, 32 and 39, respectively.

In view of the foregoing discussion, the § 103(a) rejections based the '863 patent taken alone or in combination with the '587 patent are improper. Respective withdrawal of the rejections is requested.

### **NEW CLAIMS 48-49**

Again, by this reply, new independent claims 48 and 49 have been added. To the extent that the applied art is applicable against them, the following is submitted.

A distinction of claim 48 over the applied art is that the second heartbeat signal is sent independently of the first heartbeat signal. Again, the asserted second heartbeat signal of the '863 patent is an acknowledgement signal. As such, it is sent only upon receipt of Message No. 1 (again, interpreted by the Examiner as the first heartbeat signal), i.e., the acknowledgement depends upon Message No. 1.

A distinction of claim 49 over the applied art is that each of the first and second heartbeat signals are sent using a connectionless protocol, e.g., UDP. The '863 patent teaches (e.g., col. 5, lines 58-61; col. 4, lines 6-9; etc.) that there is a reply to each message (of which Message No. 1 is an example of a message). Such replies are characteristic of a connection-based protocol, not a connectionless protocol.

**CONCLUSION**

The issues raised in the Office Action are considered resolved. Accordingly, Applicant once again requests a Notice of Allowability.

**Person to Contact**

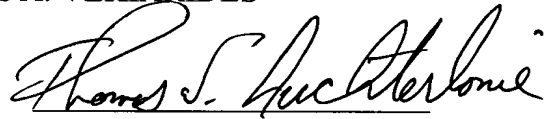
In the event that any matters remain at issue in the application, the Examiners are invited to contact the undersigned for the purpose of a telephonic interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-2025 for any additional fees under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

Nicos A. VEKIARIDES

By:



Thomas S. Auchterlonie  
Reg. No. 37,275

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 8910  
Reston, VA 20195  
(703) 668-8000

TSA:bof:tta